

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA :
:
v. :
HOLLIE THOMAS KENNEDY : Case No. **1:19CR00029**

**RESPONSE TO MOTION FOR MODIFICATION OF SENTENCE OR IN THE
ALTERNATIVE ENLARGEMENT OF TIME TO REPORT**

Defendant Hollie Thomas Kennedy (“Kennedy”) has filed a motion to modify his sentence or, in the alternative, extend his time to report to prison, based on the global pandemic of coronavirus COVID-19. While the government does not object to a 60-day extension of time to report to FCI Beckley, it objects to a modification of Kennedy’s final sentence. The court lacks jurisdiction to modify Kennedy’s sentence prior to his exhaustion of administrative remedies. And regardless, the pandemic does not justify any modification.

A court may reduce a term of imprisonment upon finding “extraordinary and compelling circumstances.” 18 U.S.C. § 3582(c)(1)(A). However, under 18 U.S.C. § 3582, as amended by the First Step Act, the court may only act “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” Although not formally presented as a request for compassionate release under 18 U.S.C. § 3582(c)(1)(A), Kennedy has requested a modification of his sentence based on concerns about COVID-19. The court should not consider such request until Kennedy has exhausted his administrative remedies as required under the statute.

Even if the court *did* have jurisdiction to consider Kennedy's request, the coronavirus pandemic does not justify a modification of his sentence. To date, there is no evidence that COVID-19 has been introduced to FCI Beckley. Moreover, Kennedy presents no evidence that there has been a lack of precautions or appropriate measures by the facility in response to COVID-19. To the contrary, he notes that FCI Beckley is currently under quarantine. There is no evidence that the facility is unprepared to respond to exposure or care for those who may become infected with the virus. The government recognizes the serious health risks of COVID-19, but the coronavirus pandemic should not be the sole basis for modifying a defendant's final sentence.

For these reasons, the government does not object to a 60-day extension of time to report to FCI Beckley, but respectfully requests that Kennedy's motion to modify his sentence be dismissed without prejudice to later presentation under the terms of the First Step Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, April 7, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for the defendant.

/s/ Lena L. Busscher
Assistant United States Attorney